

## Harter Secrest &amp; Emery LLP

ATTORNEYS AND COUNSELORS

## EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

**CONSOLIDATED APPROPRIATIONS ACT, 2022 TEMPORARILY RESTORES TELEHEALTH EXCEPTION FOR HIGH DEDUCTIBLE HEALTH PLANS**

On March 15, 2022, President Biden signed into law the Consolidated Appropriations Act, 2022 (“Act”), temporarily restoring the ability for high deductible health plans (“HDHP”) to pay for telehealth services before a covered individual satisfies the plan’s annual deductible without causing the individual to be ineligible for health savings account (“HSA”) contributions. The Act also temporarily restores the treatment of telehealth services as “disregarded” coverage that doesn’t cause a person who is covered under an HDHP to be ineligible for HSA contributions. The Act restores this favorable treatment for months “beginning after March 31, 2022” and “before January 1, 2023.” In other words, during the period from April 1, 2022 through December 31, 2022, an HDHP is permitted to pay for telehealth services before the annual deductible is satisfied without causing the plan to fail to be considered a high deductible health plan under Internal Revenue Code section 223, and an individual may receive telehealth services outside of the HDHP, without regard to the HDHP deductible, and such telehealth coverage will not disqualify the individual from being eligible for HSA contributions.

The CARES Act had amended Internal Revenue Code section 223 to permit HDHPs to pay for telehealth services before the deductible was satisfied and to treat telehealth services as disregarded coverage, but the CARES Act exception applied for plan years beginning on or before December 31, 2021. For calendar year plans, that meant that the favorable treatment expired December 31, 2021. The Act does not address the period from January 1, 2022 through March 31, 2022, which presumably means that if a plan did provide telehealth services before the deductible during that period, it would not constitute a high deductible health plan under section 223 of the Internal Revenue Code.

The Act may be of limited use to employers, unless they want to make a mid-plan year change to waive the deductible for telehealth services. Implementing a mid-plan year change can be challenging to administer as claims administration systems are often time-consuming (and expensive) to change. Also, under the rules regarding summaries of benefits and coverage (“SBCs”), a plan must provide notice of a material modification to the content of the SBC 60 days in advance of implementing the change. It’s not clear whether eliminating the deductible with respect to telehealth services would be considered a material modification. But given these complications, implementing a mid-plan year change may not be worth the effort for employers, particularly given the Act’s sunset provision pursuant to which the favorable treatment will end December 31, 2022.

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Practice Group Leader  
Paul W. Holloway

Health and Welfare  
Thomas J. Hurley  
John W. Brill

Counsel  
Leslie E. DesMarteau  
Lisa G. Pelta  
Joseph E. Simpson

Associates  
Amanda M. Karpovich  
Crosby A. Sommers  
Hailey S. Trippany

Benefits Litigation  
Jessica N. Clemente  
Erika N. D. Stanat

Retirement  
Mark R. Wilson

Executive Compensation  
Christopher M. Potash

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